

IN THE SENATE OF THE UNITED STATES.

APRIL 14, 1880.—Ordered to be printed.

Mr. COCKRELL, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill S. 1291.]

*The Committee on Claims, to whom was referred the bill (S. 1291) for the relief of Charles W. Denton, have carefully considered the same, and submit the following report:*

This bill directs the Secretary of the Treasury to pay to Charles W. Denton, of Oregon, or his legal representatives, \$25,000, in full payment of and satisfaction for the use and occupation of his lands in Oregon and the destruction of property thereon by the military authorities of the United States from 1854 to 1860. This claim was first presented in the House of Representatives in Ex. Doc. No. 96, Forty-second Congress, second session, January 25, 1872, which was referred to the Committee on Claims and ordered to be printed; and on May 24, 1872, the House Committee on Claims reported a bill (H. R. 2901) allowing claimant \$5,000, in full of his claim, with a printed report (No. 85) accompanying the same. That bill passed the House and was sent to the Senate January 25, 1873, where no action was had. In the Forty-third Congress, first session, on January 5, 1874, Senate bill 243 was introduced and referred to the Committee on Claims, and on March 17, 1874, Mr. Merriam submitted an adverse report thereon, which is as follows, to wit:

*The Committee on Claims, to whom were referred the bill (S. 243) for the relief of Charles W. Denton, of Oregon, and the accompanying papers, have had the same under consideration, and make the following report:*

That the petitioner alleges that, in the year 1854, he owned a land-claim in the county of Wasco, in the State of Oregon, under the act of Congress entitled "An act to create the office of surveyor-general of the public lands of Oregon, and to provide for the survey, and to make donations to settlers of the public lands," approved September 27, A. D. 1850; that during the months of September and October, A. D. 1854, one Sergeant Dougherty, of the United States Army, placed upon the said land-claim a large number of Indians, and they were kept on the same until the year 1860, when they were removed, &c.; that the said Indians cut and destroyed much of the timber on said land-claim, and prevented the petitioner from using the land, timber, &c.; and for such injuries he claims damages.

The committee are of opinion that it does not appear sufficiently that the petitioner had matured his title to said land, and the evidence he submits in support of his claim is too indefinite to warrant any allowance for such damages as he claims. Indeed, it does not reasonably appear what, if any, damages he sustained. His claim appears to rest mainly on speculative and remote grounds.

The committee, therefore, report back S. bill 243, being "A bill for the relief of Charles W. Denton, of Oregon," and recommend that the same do not pass.

And the bill was indefinitely postponed. In 1874, January 7, the papers were referred to the House Committee on Claims, and on January 12 bill H. R. 1151 was introduced in the House and referred to the

same committee. No action seems to have been had in the Forty-third Congress.

In the Forty-fifth Congress, November 13, 1877, the papers in this claim with bill S. 278 were referred to the Senate Committee on Military Affairs, and on January 17, 1878, bill H. R. 1735, for the relief of this claimant, was introduced and referred to the Committee on War Claims. No action had.

In the present Congress the claimant again appears and renews his claim. Your committee, waiving the question of whether under the rules of the Senate this claim could again properly be referred to it, after having been adversely reported and indefinitely postponed, has re-examined the whole claim without regard to former action. The Executive Document No. 96, which seems to have been the origin of this claim in Congress, contains letters of the Secretary of the Interior and the Commissioner of Indian Affairs, and a copy of the claim of said Denton, and also of his donation claim to the lands upon which the depredations are charged to have been committed, and the affidavits of said Denton and some sixteen witnesses. The letters of the Secretary of the Interior and Commissioner of Indian Affairs, and the donation-claim of said Denton and his affidavit, are as follows, to wit:

DEPARTMENT OF THE INTERIOR,  
*Washington, D. C., January 25, 1872.*

SIR: The claim of C. W. Denton for depredations committed upon his property by Indians in Oregon from 1854 to 1860 is herewith submitted for the consideration and action of Congress, under the fourth section of the act making appropriations for the Indian Department, approved July 15, 1870 (Statutes at Large, vol. 16, p. 360).

A copy of a report of the Commissioner of Indian Affairs, dated the 12th of April, 1871, in relation to the claim, is also herewith transmitted.

Very respectfully, your obedient servant,

C. DELANO, *Secretary.*

Hon. JAMES G. BLAINE,  
*Speaker of the House of Representatives.*

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
*Washington, D. C., April 12, 1870.*

SIR: On the 28th December last the Hon. G. H. Williams filed in this office a claim of Charles W. Denton, amounting to \$25,000, for the occupancy and use of his land, and the destruction of timber thereon, near the Dalles, Oregon—upon which he had settled in 1853, under an act of Congress of 27th September, 1870, known as the donation-law of Oregon—by “a large number of Indians,” placed there by United States authorities.

The testimony adduced in the case, in the judgment of this office, appears to sustain the statement of the claimant as to the fact of his property having been occupied by certain Indians, and that he sustained some loss by their using and destroying a part of his timber, and by their presence preventing him from cultivating his land. The loss is estimated by himself, and most of those persons who testify in the case, to be from \$4,000 to \$6,000 each year, from the time the Indians were brought to his place until they were removed therefrom, viz, from 1854 to 1860.

I have the honor herewith to submit the case for your consideration, with the remark that if it be regarded as a claim in the nature of a depredation by Indians, to which the seventeenth section of the law of June 30, 1834, regulating trade and intercourse with Indian tribes, is applicable, then it is barred by the limitation clause in said section, not having been submitted to the department within three years after the act of depredation; and I would further remark that, if the case were not barred, it would be impracticable for the department to direct the usual course to be taken to have the claim presented to the Indians in council with a demand upon them for satisfaction, for the reason that the name of the tribe or tribes to which the “large number of Indians” referred to by claimant belong is not given.

I recommend that the claim be laid before Congress for the action of that body.

Very respectfully, your obedient servant,

H. R. CLUM,  
*Acting Commissioner.*

Hon. C. DELANO.

*Claim of Charles W. Denton.*

To the Hon. Commissioner of Indian Affairs, Washington City, D. C.:

I beg leave to present for adjustment, and payment if found proper, an account against the United States, growing out of the relations of the government with the Indian tribes in Oregon. The accompanying affidavits will show the nature of the claim and the reason why the claim and proof are submitted now. The claim is this:

UNITED STATES OF AMERICA TO CHARLES W. DENTON, DR.

To use and occupation by the Indians of Eastern Oregon of the lands of Charles W. Denton from 1854 to 1860, by authority of the government or its agent, and for fire-wood and waste of timber from said lands by the Indians during the said years, at \$5,000 per year..... \$25,000

his  
CHARLES W. + DENTON.  
mark.

DALLES CITY, WASCO COUNTY,  
State of Oregon, September, 30, 1870.

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DONATION.

Certificate No. 3771. Notification No. 8019.

Whereas, in conformity with the provisions of the seventh section of the act of Congress approved September 27, 1850, entitled "An act to create the office of surveyor-general of the public lands of Oregon, and to provide for the survey, and to make donations to settlers of the public lands," and the amendments thereto, Charles W. Denton, of the county of Wasco, in the State of Oregon, claiming a donation right, in virtue of the act aforesaid, to the following tract of public lands, known and designated in the surveys and plats of the United States as the claim No. 42, being a part of sections 5 and 8, in township 1 north, range 13 east, bounded and described as follows: beginning at a point 13.77 chains east and 6.07 chains north of the southeast corner of said section 5; thence south 69.50 chains; thence east 16.29; thence north 22.30 chains; thence east 43.56 chains; thence north 0° 14' west 47.42 chains; thence west 59.85, to the place of beginning, containing 329.51 acres, the east half to Charles W. Denton, and the west half to Elizabeth Denton, his wife; having proven to the satisfaction of the register and receiver of the Willamette district, Oregon, the fact that such settlement was commenced on the 1st day of August, 1854, four years prior to the date hereof; and having, in pursuance of the requirements of the seventh section of the act aforesaid, established by two disinterested witnesses the fact of continued residence and cultivation, by the said act: Now, therefore, be it known that we, Owen Wade and Henry Warren, register and receiver of public lands in said district, do hereby, and pursuant to the seventh section of the act aforesaid, certify to the Commissioner of the General Land Office the facts aforesaid, accompanied by the evidence therefor, in order that a patent may be issued to said claimant for the tract of land described, as required by the seventh section of the act aforesaid: *Provided*, That the said Commissioner shall find no valid objections thereto.

Given under our hands at the land-office at Oregon City, Oreg., this 24th day of August, 1870.

OWEN WADE, Register.  
HENRY WARREN, Receiver.

UNITED STATES LAND OFFICE, Oregon City, Oreg.:

I, Owen Wade, register of said land-office, hereby certify that Charles W. Denton, of Wasco County, Oregon, filed his notification on unsurveyed land under the act of Congress of September 27, 1850, and amendments thereto, known as the donation law of Oregon, on the 17th day of February, 1855; that he filed his final notification after survey of land; and that he made his final proof under date of February 16, 1860, as appears by the records of this office, said claim being parts of sections 5 and 8, in township 1 north, range 13 east.

Given this 24th day of August, 1870.

OWEN WADE, Register.

STATE OF OREGON, *County of Wasco*, ss:

I, Charles W. Denton, being duly sworn, do say I am a white citizen of the United States, born in the State of Virginia, in Montgomery County, in the year 1833, and married on the 1st of January, 1852; that I have been a resident of Wasco County, State of Oregon, since July 23, 1852. In February, 1853, I staked off a land claim in the now said county on unsurveyed land, under the donation-land law of Congress passed September 27, 1850, and have resided upon, cultivated, and held the same ever since; that the said claim lies on Mill Creek, the north line of the claim being about one-quarter of a mile southwest of the line of the United States military reservation of Fort Dalles, in township 1 north, range 13 east, according to the United States surveys of Oregon, and is about two miles from the city of Dalles, in said county; that my donation claim is No. 8019 in order of notification; that I made final proof of residence and cultivation in the land-office of Oregon, as will appear from the papers certified by the land-office department at Oregon City and annexed hereto, together with copy of certificate of donation claim; that after commencing my residence upon said claim, to wit, in the year 1854, during the months of September and October, Sergeant Dougherty, of Company K, of the Ninth United States Infantry, as I believe, brought and placed upon my claim a large number of Indians, then under charge of the United States authorities; that previous to the bringing of such there had been a talk and agreement between the United States authorities and the Indians near the Dalles, and immediately after the outbreak of hostilities by the Indians and the death of Agent Bolon, these Indians were brought upon my claim and left there as stated; and from that time until the summer of 1855 more were brought, and others of the peaceable Indians came, until the number amounted to between seventy-five and one hundred lodges, averaging, perhaps, from four to seven persons to each lodge; that these Indians were brought and left upon my land claim against my consent, expressed to Colonel Wright, then commanding at Fort Dalles. He stated to me that it was necessary to have the Indians somewhere under control, and stated that I would certainly be paid for all inconvenience and damages; that these Indians occupied all the tillable ground in my place, both that then fenced and that which I had not yet inclosed, but which I had made preparations to fence; that they, in a measure, tilled portions of it and entirely put it out of my power to use the same; their horses and themselves prevented any profit to me in the use in any way of all the available parts of my land claim; that they remained there until the spring of 1860, when the United States authorities removed them to the Indian reservations, mostly to Warm Springs reservation; that during all of said time the Indians so located obtained their fire-wood off my claim, and cut and destroyed by far the greater portion of timber growing on my claim before and during the years of said occupation; that during said time the Indians drew rations and supplies from the United States Government, and were under the care and protection thereof; that said claim is now and was then of great value as a garden and farm, and the timber of great value, being easy of access, and near to the Dalles as a place of market; that it was easy of irrigation, and as valuable for raising of vegetables and crops as any piece of land in Wasco County, and has been by me, ever since 1860, used extensively for such purposes; that I intended, in 1853, to apply it to such purposes, but was prevented from so doing by the presence of those Indians; that the use of said land during said years would have been of great value, in part because it was not safe during some of said years to live at any great distance from a place of safety, and in part because of the difficulty in getting lands ready for such uses, and in part because a market for the sale of products existed close by; that the use of said land from 1854 to the spring of 1860 was well worth the sum of from \$5,000 to \$6,000 per year, including the timber cut down, used, and destroyed by the Indians during their stay; that the timber so used was well worth one-fifth of the amount claimed; that the whole value of use of land and timber by the Indians, and my deprivation thereof during said time, was well worth the sum of \$26,000; that the said amount is justly due me from the United States; that I have received no pay whatever therefor; that I made out papers therefor, with proofs thereof, in 1860 or 1861, and intrusted them to William H. Farrar, our attorney of the supreme court of the State of Oregon, who took them to Washington City, and I supposed had taken the necessary steps to procure the allowance of my claim, or the adjustment of it. Upon his death, which occurred some two years ago, I made inquiry of my business, and can find no trace of any steps having been taken by him in any of the departments at Washington, nor can I find the papers then made out, not having access in any way to the papers belonging to his estate, he having died in the Eastern States. I further state that said sums are justly due me as stated; that if I had been allowed to occupy and till my land during the time from 1854 to 1860 I would now have a far more valuable land claim than it is, since my orchards, now the best in this county, would have been far superior to what they are, and my tillage and profits from my land much increased. From 1855 to 1864, potatoes would average in price 5 cents per pound, and other veg-



etables in proportion; fruit from 10 cents to 12 cents per pound; and wood \$3 and \$10 per cord, for same time.

his  
CHARLES W. + DENTON.  
mark.

Sworn and subscribed before me this 3d day of September, 1870.

[SEAL.]

E. B. COMFORT,

*Notary Public in and for said county and State.*

The affidavits of the witnesses printed in said Ex. Doc. are about as indefinite and uncertain in their statements as the claimant is in his own affidavit. In addition to the evidence in said document your committee find six affidavits transmitted to the Committee on Claims January 19, 1874, by Charles Ewing and A. H. Jackson, attorneys. Five of these affidavits were made in December, 1873, and one in January, 1874, and are as general, indefinite and uncertain in statements as those presented in said document. These witnesses speak in general terms of the oak, pine, and cottonwood on said lands destroyed by the Indians being worth from \$1,000 to \$1,500, and that Denton had 75 or 80 acres in cultivation in 1857, and that in 1873 he had about 200 acres inclosed, and that the lands, if properly cultivated, would produce 140 to 160 tons of hay, which would be worth from some \$60 to \$80 per ton.

Your committee referred the claim to the Secretary of War, and was advised that they found no record or information in the case. Your committee referred the bill to the Secretary of the Interior, asking for all information in possession of the Indian Office and General Land Office not contained in said executive document, and received through him the following communications, to wit:

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
*Washington, March 5, 1880.*

SIR: I have the honor to acknowledge the receipt, by department reference, for report, of a letter from Hon. F. M. Cockrell, United States Senate, dated the 13th instant, inclosing printed copy Senate bill No. 1291, Forty-sixth Congress, second session, being "A bill for the relief of Charles W. Denton" (arising out of a claim of said Denton, amounting to \$25,000, for the use and occupation of certain lands situated near the Dalles, Oreg., and the destruction of timber thereon from 1854 to 1860 by a large number of Indians alleged to have been placed there by United States authorities), and calling for certain information and any additional evidence in this department touching the said claim, not embraced in Executive Document No. 96, House of Representatives, Forty-second Congress, third session, and to report thereon as follows:

In response to the honorable Senator's inquiry, as to who was in charge of the Indians in that region of the country during the time the claim accrued, and what particular tribe or body of Indians was placed upon the lands claimed, by whose order, and under whose direction, and for what purpose, I have to state that upon an examination of the official reports of this office between the years 1854 and 1860, inclusive, it appears that the Indians of Middle Oregon (the region in question) were successively under the immediate charge of United States Indian Agents R. R. Thompson, A. P. Dennison, and Subagent G. H. Abbott, respectively, stationed at the Dalles Agency, attached to the Oregon Superintendency, successively administered between the same periods by Superintendents Joel Palmer, J. W. Nesmith, and E. R. Geary.

By the official reports of this office for the years 1855, 1856, it appears that in the latter part of the year 1854 the superintendent of Indian affairs in Oregon and the governor and ex-officio superintendent in Washington were severally instructed by this department to negotiate with the tribe in Oregon and Washington Territories for the relinquishment of their title to the lands held by them, and to effect their concentration upon a few reservations in locations not touching on the white settlements.

The execution of these instructions was interrupted by the breaking out of hostilities in Southern Oregon, and afterwards in Washington Territory, involving a number of adjacent tribes in both Territories. The war raged in various localities from October, 1855, to the 1st of June, 1866.

Temporary provisions having been made early in December, 1855, from appropriations at the command of the department, for the extraordinary expenses of preventing an extension of the spirit of dissatisfaction amongst the tribes, and of collecting the peaceful Indians in locations withdrawn from contact with hostile bands, the placing

of the appropriation by the President at the disposal of this department enabled its officers to extend their plans and prosecute them with vigor.

In both Territories the same policy of collecting and temporarily subsisting the peaceful tribes in large numbers, and encouraging hostile bands to surrender their arms, appears to have been adopted and carried out with considerable success.

According to the official report of United States Indian Agent R. R. Thompson for the year 1854 (Report Com. Ind. Affairs, 1854, p. 285), the Indians attached to the Dalles Agency in that year consisted of the following tribes or bands, viz: Dog River or Cascade Indians, Wascos, Tyichs, Des Chutes, John Days, Umatillas, Cayuses, Nez Percés, Flatheads, Shoshones (including Mountain Snakes, Bannocks, and Diggers), and sundry other scattering bands found along the Columbia River, including many fragments of tribes having no chiefs and acknowledging no authority beyond the head of a large family.

The same Indians, with the addition of the Walla Wallas, were reported as attached to the Dalles Agency in 1857-'58, but, after careful examination, I am unable to find any evidence of record, or in the files of this office, tending to show that any tribe or body of Indians was at any time placed upon the lands claimed, neither do I find any record of orders in connection therewith or reference thereto in any particular.

Of the Indians named, the Wascos, Des Chutes, and Tyichs were, in 1857-'58, removed to the Warm Spring Reservation under the treaty of June 25, 1855 (12 Stat., 963); the Walla Wallas, Cayuse, and Umatillas to the Umatilla Reservation, in 1861, under the treaty of June 9, 1855 (12 Stat., 945), and subsequently the Nez Percés, Flatheads, and Snake Rivers, to other reservations.

I have further the honor to state that I do not find that any claim was ever presented to this office by Mr. Denton, prior to September 30, 1870.

I herewith submit copies of two additional reports touching said claim made to the department by this office on the 19th January and 23d April, 1872, respectively, not embraced in said executive document.

I inclose a copy of this report, and return Senator Cockrell's letter with its inclosures.

Very respectfully, your obedient servant,

E. J. BROOKS,  
*Acting Commissioner.*

The Hon. SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
Washington, January 19, 1872.

SIR: I have the honor to acknowledge the receipt of your letter of the 13th instant, returning therewith, for my consideration and such recommendation as I may desire to make in relation to them, the following claims on account of depredations committed by Indians, viz:

Bickford and Stanley, against the Kiowas, amount .....	\$1,400 00
Christopher Weidner, against the Kiowas, amount .....	2,388 25
Curtis and Cole, against the Kiowas, amount .....	3,650 00
H. M. Fosdick, against the Arapahoes, amount .....	500 00
Curtis and Cole, against the Cheyennes, amount .....	2,120 00
N. Gonzales, against the Navajoes, amount .....	2,100 00
J. W. Howsley, against the Navajoes, amount .....	2,133 00
C. W. Denton, against the Oregon Indians, amount .....	25,000 00

Having examined the papers in these cases, and read the accompanying reports of this office in regard thereto, I beg leave to submit briefly my opinion in each case.

The views of the office heretofore expressed in the case of C. W. Denton I think are correct. The claim is for a large sum, and is not so much for property destroyed as for consequential damages by reason of the Indians occupying the land of said Denton so as to prevent its cultivation by him. Claims of this character have not been deemed admissible by the department, but it being charged that the Indians destroyed some timber, how much nor the value thereof is not stated, I suggest that the claim be suspended, and the claimant be permitted to adduce further testimony as to the loss actually sustained by him in the destruction or taking away by the Indians referred to in the claim of any of his property.

The claims are herewith returned.

Very respectfully, your obedient servant,

F. A. WALKER,  
*Commissioner.*

Hon. C. DELANO,  
*Secretary of the Interior.*

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
*Washington, April 23, 1872.*

SIR: I have the honor to acknowledge the receipt by reference from the department on the 9th instant of the letter of Hon. W. P. Frye, inclosing Executive Document No. 96, H. R., Forty-second Congress, second session, relative to the claim of C. W. Denton for depredations alleged to have been committed upon his property by Indians in Oregon.

Mr. Frye requests the opinion of the department upon the case of Mr. Denton, and this office is called upon by the department for a report relative thereto.

I have carefully read the document, which embraces the evidence submitted in the case, and a report addressed to you by the Acting Commissioner of Indian Affairs on the 12th of April, 1870. I concur with the opinion expressed by the Acting Commissioner, that if the claim be regarded in the nature of a depredation by Indians, to which the seventeenth section of the law of June 30, 1834, regulating trade and intercourse with Indian tribes, is applicable, then it is barred by the limitation clause in said section, the claim not having been presented to the department within a prescribed time. But I question if it can be rightly so considered.

It appears that the claimant in 1853 became lawfully the possessor of a tract of land in Wasco County, Oregon, upon which he settled; that he fenced and cultivated a part of the same, and was preparing to make further improvements, when, in 1854, a number of friendly Indians were, in consequence of the outbreak of Indian hostilities in Oregon occurring at that time, brought by United States military authorities and placed upon his land for the purpose, as stated to the claimant by Colonel Wright, commanding at Fort Dalles, of having them where they could be controlled; that these Indians occupied all his tillable ground, fenced and not fenced; that they used and wasted his timber; and that this condition of things continued from September, 1854, until the spring of 1860, whereby he was prevented from cultivating the land and prosecuting a profitable business of market-gardening and farming.

I submit that the settling of the Indians upon claimant's property not being their own voluntary act, and their continued occupation of the same being by constraint, whatever injury may have resulted therefrom to the claimant was not an Indian depredation, but must be regarded as constituting a case of use and waste by the Army for its own purposes just as much as if, instead of Indians, the military authorities had placed cattle or horses upon the claimant's land. Nothing appears in evidence to prove that any injury done the claimant resulted from malice on the part of the Indians toward the government or toward the claimant personally. I am not, therefore, disposed to regard this case as coming within the scope of the law referred to relative to depredations by Indians against citizens.

I further concur in the opinion of the Acting Commissioner that the testimony adduced appears to sustain the statements of the claimant that his property was occupied by the Indians, as hereinbefore recited, and that he suffered appreciable loss thereby.

Waiving for the present the question whether the injury sustained by claimant, being considered as done by the military authorities for their own purposes, this office has any interest in furthering the claim of Mr. Denton for compensation, or can be presumed to know the extent of such injury, I would say that the losses of Mr. Denton being mainly consequential, it is difficult, if not impracticable, to satisfactorily determine the extent thereof. Claimant estimates them at \$25,000, or \$5,000 per year, and several of the parties testifying in his behalf at from \$4,000 and \$5,000 to \$6,000 per year. I think it very doubtful whether, under the most favorable circumstances, the claimant would have realized from his labor and the products of his land anything like the lowest sum mentioned per year. I suggest that \$1,000 per year would be a fair and sufficient remuneration for the loss sustained or injury done on all accounts, whether by the use and waste of timber by the Indians, or by the occupancy of the land.

The letter of Hon. Mr. Frye and inclosure are herewith returned.

Very respectfully, your obedient servant,

F. A. WALKER,  
*Commissioner.*

Hon. C. DELANO,  
*Secretary of the Interior.*

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DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., February 20, 1880.*

SIR: In connection with Senate bill No. 1291, for the relief of Charles W. Denton, of Oregon, referred to this office on the 14th instant, by the department, together with

an extract of a letter dated the 13th instant from the Hon. F. M. Cockrell, I have the honor to submit the following:

It is presumed that the bill relates to the donation claim of Charles W. Denton, known as claim No. 42, being parts of sections 5 and 8 in township 1 north, of range 13 east, and situated near the Dalles, in Oregon.

From evidence on file in this office it appears that Charles W. Denton, on February 17, 1855, filed his notification No. 77, on unsurveyed land, claiming 320 acres, as a married man, under the provisions of the 5th section of the Oregon donation act of September 27, 1850 (Stats. 9, p. 496), as extended by the 5th section of the act of February 14, 1853 (Stats. 10, p. 158), and made his preliminary proof showing the date of his settlement to have been August 15, 1854.

The official survey of the township in which the claim of Mr. Denton lies, was approved by the United States surveyor-general, February 4, 1860.

On February 16, 1860, Denton made another notification, describing his claim by metes and bounds, and connected it with the lines of the public surveys, and, with this notification, filed proof of residence upon and cultivation of the claim from August 1, 1854, to February 15, 1860, and proof of marriage from July 20, 1853, to February 16, 1860.

On August 24, 1870, the register and receiver at Oregon City, in whose district the claim then was, issued a patent certificate for the claim, and on August 1, 1873, this office issued the patent therefor in favor of Charles W. Denton and his wife Elizabeth Denton, of Wasco County, Oregon, and described the land as follows: "Claim number forty-two, being parts of sections five and eight in township one north, of range thirteen east," "being bounded and described as follows, to wit: Beginning at a point thirteen chains and seventy-seven links east, and six chains and seven links north of the southwest corner of said section five, and running thence south sixty-nine chains and fifty links; thence east sixteen chains and twenty-nine links; thence north twenty-two chains and twenty links; thence east forty-three chains and fifty-six links; thence north fourteen minutes west forty-seven chains and forty-two links, and thence west fifty-nine chains and eighty-five links to the place of beginning, containing three hundred and twenty-nine acres and fifty one-hundredths of an acre." The east half of the claim was assigned to Charles W. Denton, while the west half was assigned to his wife, in her own right.

These donation claims were not required to be taken by legal subdivisions in accordance with the lines of the public surveys.

In regard to the character of the land in the township in which Mr. Denton's claim lies, the following is found on the plat of official survey: "High table land, good grazing, timber, scattering oak, and pine."

In this connection I deem it proper to call attention to the fact that this claim is situated within two or three miles of the town of the Dalles on the Columbia River, at which place the Secretary of War, on the 29th of January, 1848, directed a military reservation of ten miles square to be made.

Of the boundaries of this reservation this office has no official knowledge. On the 18th of May, 1854, the Secretary of War directed its reduction to 640 acres as required by section 9 of the act of February 14, 1853, hereinbefore referred to.

The reservation appears to have been reduced under the supervision of Maj. G. I. Rains, as evidenced by a report made by him to the Secretary of War August 18, 1855, but at what particular date, is not known to this office.

The accompanying diagram exhibits the tract selected for military purposes by Major Rains, supposed to be within the original ten-mile reservation, in connection with the claim of Denton. The boundaries of the lands selected for military purposes, were subsequently changed (sometime in 1859, exact date not known) under the direction of General Harney, which are also indicated on the diagram.

The above several selections for military purposes now present a question that does not appear to have been considered at the time of the final examination and patenting of the donation claim of Denton and wife; and that is: Was not the land covered by the claim reserved from settlement under the donation act, by the proviso in the 9th section of the act which provides that no donation right shall attach to any tract or parcel of land selected for a military post, or within one mile thereof, unless the residence and cultivation shall have commenced previous to the selection or reservation?

The files of the War Department will probably furnish a more complete history of the selections made for military purposes than that herein given.

The bill and extract from Mr. Cockrell's letter are returned herewith.

Very respectfully, your obedient servant,

J. M. ARMSTRONG,  
*Acting Commissioner.*

Hon. CARL SCHURZ,  
*Secretary of the Interior.*



A very important question arises: What right, title, or claim, in law or equity, did this claimant have to these lands from 1854 to 1860, which will justify his recovery against the United States of the losses he claims to have sustained? In the donation-claim certificate hereinbefore copied it is stated to have been proved that the settlement of claimant on said lands was commenced August 1, 1854, and that he filed his notification on unsurveyed land on February 17, 1855, and that he filed his final notification after the survey of the land and made his final proof February 16, 1860, and in his affidavit setting forth his claim he states that he has been a resident of Wasco County, Oregon, since July 23, 1852, and that in February, 1853, he staked a land claim on unsurveyed land, the north line of the claim being about one-quarter mile southwest of the line of the United States military reservation of Fort Dalles. According to the records of the General Land Office the official survey of the township embracing the lands of the claimant was approved by the United States surveyor-general February 4, 1860, and that on August 24, 1870, the register and receiver at Oregon City issued a patent certificate for the claim, and on August 1, 1873, a patent was issued by the United States to Charles W. Denton and his wife, Elizabeth Denton, for 329  $\frac{51}{100}$  acres, the east half being assigned to Charles W. Denton and the west half to his wife in her own right. It further appears from the records of the General Land Office that on January 29, 1848, the Secretary of War made the Fort Dalles military reservation, embracing ten miles square, and on May 18, 1854, directed its reduction to 640 acres, and according to the affidavit of Denton his claim was in one-quarter of a mile of the line of said reservation.

Now let us examine the law in regard to such a claim and military reservations.

The act of Congress referred to, entitled "An act to create the office of surveyor-general of the public lands in Oregon, and to provide for the survey and to make donations to settlers of the said public lands," approved September 27, 1850, section 4 provides "that there shall be, and hereby is, granted to every white settler or occupant of the public lands, above the age of eighteen years, being a citizen of the United States, \* \* \* now residing in said Territory, or who shall become a resident thereof on or before the 1st day of September, 1850, and who shall have resided upon and cultivated the same for *four* consecutive years, and shall otherwise conform to the provisions of this act, the quantity of one half-section, or three hundred and twenty acres, of land, if a single man, and, if a married man, or if he shall become married within one year from the 1st day of December, 1850, the quantity of one section, or six hundred and forty acres, one-half to himself and the other half to his wife, to be held by her in her own right. And the surveyor-general shall designate the part inuring to the husband and that to the wife, and enter the same on the records of his office: \* \* \* *Provided further*, That in all cases provided for in this section the donation shall embrace the land actually occupied and cultivated by the settler thereon."

Section 9 provides "that no claim to a donation right under the provisions of this act, upon sections 16 or 36, shall be valid or allowed if the residence and cultivation upon which the same is founded shall have commenced after the survey of the same; nor shall such claim attach to any tract or parcel of land selected for a military post, or within one mile thereof, or to any other land reserved for governmental purposes, unless the residence and cultivation thereof shall have commenced previous to the selection or reservation of the same for such purposes."

Section 14 provides \* \* \* "And that such portions of the public

lands as may be designated, under the authority of the President of the United States, for forts, magazines, arsenals, dock-yards, and other needful public uses, shall be reserved and excepted from the operations of this act: *Provided*, That if it shall be deemed necessary, in the judgment of the President, to include in any such reservation the improvements of any *settler made previous to the passage of this act*, it shall in such cases be the duty of the Secretary of War to cause the value of such improvements to be ascertained, and the amount so ascertained shall be paid to the party entitled thereto out of any money not otherwise appropriated."

The following are the acts supplemental to the aforesaid act of 1850: Act of February 14, 1853 (Stats. 10, page 158); act of July 17, 1854 (Stats. 10, page 305); act of June 25, 1864 (Stats. 13, page 184).

This claim originated from 1854 to 1860, was first presented to the Commissioner of Indian Affairs, September 30, 1870, ten years after its origin, and one month and seven days after the issuance of the patent certificate for the land claim, and the fact of the claim being within one-quarter of a mile of the military reservation of Fort Dalles does not appear to have been considered at the time of the final examination and patenting of the donation claim of said Denton and wife; why this fact was not made known does not appear. The only excuse given by claimant for not presenting his claim earlier is stated in his affidavit to be that he made affidavits therefor with proofs in 1860 or 1861, and entrusted them to William H. Farrer, an attorney, who took them to Washington City, and he supposed had taken the necessary steps to procure the allowance or adjustment of his claim, and that upon Farrer's death, some two years prior to September, 1870, he made inquiry of his business and could find no trace of any steps having been taken, nor any of the papers then made out. In the opinion of your committee there are sundry reasons why this claim should not now be allowed, among which are the following:

First. The claim is old and stale, and the amount of it is grossly exaggerated and mere guessing.

Second. The claimant has been guilty of gross negligence, indifference and inattention in the presentation of his claim and in the production of competent legal testimony to sustain it, the evidence being general, indefinite, and uncertain.

Third. The claimant had no legal or equitable right to make this donation claim within one mile of the said military reservation then known to him; and the fact that the government officers at the United States Land Office in Oregon, without knowledge of this fact received final proofs and issued a patent certificate, and subsequently, in 1873, a patent was issued to him and his wife by the Commissioner of the General Land Office cannot be held as against the United States to give claimant a legal or equitable right to recover damages of the character asserted in his claim.

Fourth. Even admitting as against the United States the validity of the donation claim and that the subsequent patent issued thereon could be so construed as to vest title and right of action thereon from the date of the inception of the claim in 1854, yet such title and right of action vested not in the claimant only, but for the east half in claimant and for west half in the wife of claimant in her own right, and there is no evidence to show whether the depredations were on the half belonging to claimant or on the half belonging to his wife, and if on both, how much on each half.

Fifth. According to the plat of the official surveys these lands were

high table lands, good grazing, timber scattering, oak and pine, and according to the evidence in the case, Mr. Denton in 1857 had only 75 or 80 acres in cultivation, and the extent of any claim that he and his wife might have under any circumstances would be the rental value of such lands as were actually used and occupied by the Indians, and the value of the timber actually used and destroyed. There is no evidence whatever as to the rental value and very little evidence as to the value of the timber, and it appears from the proof made by claimant that he was in actual possession of the land the entire time, which facts had to be proven in order to complete his claim.

For these and other reasons which might be given, your committee recommends that the bill be indefinitely postponed, and that the claim therein presented be not allowed, and that this report be agreed to.

